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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 137

ÆTNA LIFE INSURANCE COMPANY, A CORPORATION, IN ITS OWN RIGHT, AND ALSO TO THE USE OF ANNA ROBERTS, IN HER OWN RIGHT AND AS ADMINISTRATRIX OF THE ESTATE OF HENRY ROBERTS, DECEASED, AND HARRY M. BRALOVE, AN INDIVIDUAL, TO THE USE OF ÆTNA LIFE INSURANCE COMPANY, A CORPORATION, PETITIONERS,

v.

SAMUEL D. MOSES, AN INDIVIDUAL.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA, AND BRIEF IN SUPPORT THEREOF.

CHARLES W. ARTH,
LEONARD J. GANSE,
Counsel for Petitioners.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No.

ÆTNA LIFE INSURANCE COMPANY, A CORPORATION, IN ITS OWN RIGHT, AND ALSO TO THE USE OF ANNA ROBERTS, IN HER OWN RIGHT AND AS ADMINISTRATRIX OF THE ESTATE OF HENRY ROBERTS, DECEASED, AND HARRY M. BRALOVE, AN INDIVIDUAL, TO THE USE OF ÆTNA LIFE INSURANCE COMPANY, A CORPORATION, PETITIONERS,

v.

SAMUEL D. MOSES, AN INDIVIDUAL.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Ætna Life Insurance Company, a corporation, in its own right, and also to the use of Anna Roberts, in her

own right and as Administratrix of the estate of Henry Roberts, deceased, and Harry M. Bralove, an individual, to the use of Ætna Life Insurance Company, a corporation, respectfully petition this Honorable Court to issue a writ of certiorari to review the judgment of the Court of Appeals of the District of Columbia in the above-entitled case (its docket No. 5358) entered on March 7, 1932 (R. 31), affirming an order and judgment of the Supreme Court of the District of Columbia.

Statement.

This case involves the construction and interpretation of Sec. 33 (*a*) (*b*) (*d*) and (*e*) of the Longshoremen's and Harbor Workers' Compensation Act (Act of Mar. 4, 1927, c. 509, 44 Stat. 1424) as applied for purposes of a workmen's compensation act for the District of Columbia (Act of May 17, 1928, c. 612, 45 Stat. 600). The case arises upon an appeal from an order of the Supreme Court of the District of Columbia sustaining the motion of the defendant (respondent herein) to strike the declaration of plaintiffs (petitioners herein), and a judgment entered in favor of the defendant upon plaintiffs' election to stand upon the declaration as drawn. The parties will be designated hereinafter as plaintiffs and defendant.

The action was brought to recover damages under the Compensation Act for a death caused by negligence of a person other than the employer. The declaration alleged that one Bralove, as general contractor, was engaged in the construction of a building in Washington,

and, pursuant to the provisions of the Compensation Act, was insured by Ætna Life Insurance Company against liability for the payment of compensation to employees or their dependents; that one Henry Roberts was employed by Bralove as a laborer, and, while in the course of his employment, was killed through the negligence of Samuel D. Moses (defendant), a subcontractor on the work; that Anna Roberts, widow of the decedent, filed claim for death benefit under the Compensation Act, and, after hearing, an award was made to her by the deputy commissioner against Bralove, employer, and Ætna Life Insurance Company, insurance carrier; that Ætna Life Insurance Company has paid and will be required to pay the amounts therein ordered; that as insurer of Bralove, as subrogee under the policy and assignee under the Act, it was subrogated to and assigned all rights of Bralove and the person entitled to compensation; that under the statute and by reason of the premises plaintiffs had been damaged in the sum of $10,000.00, for which damages were claimed (R. 2-16).

The declaration states the parties as follows:

> "Ætna Life Insurance Company, a corporation doing business in the District of Columbia, in its own right, and also to the use of Anna Roberts in her own right and as administratrix of the estate of Henry Roberts, deceased, and Harry M. Bralove, an individual, to the use of Ætna Life Insurance Company, a corporation, sue the defendant, Samuel D. Moses" (R. 2, 9).

The policy of compensation insurance issued by Ætna Life Insurance Company to Bralove, made a part

of the declaration (R. 3, 10), contains the following provision:

"Subrogation of Rights.

> "K— The Company shall be subrogated in case of any payment under this Policy, to the extent of such payment, to all rights of recovery therefor vested by law either in this Employer or, in any employee or his dependents claiming hereunder, against persons, corporations, associations or estates" (Policy, R. 13).

A copy of the Findings of Fact and Award (R. 14-16) entered by the deputy commissioner on Anna Robert's claim for death benefit is likewise made a part of the declaration (R. 8, 12).

Defendant Moses filed a motion to strike the declaration and each count thereof, setting up as grounds misjoinder of parties plaintiff and causes of action, repugnancy, and inconsistency (R. 16). The presiding justice sustained the motion with leave to amend (R. 18), and filed a written memorandum in the cause (R. 17-18), holding that because the Compensation Act contains no provision for assignment of rights of action to recover damages against third persons to any one other than the employer, and because the right of action was not one of the class assignable at common law, the assignment by Bralove to Ætna Life Insurance Company was invalid; and further, that the proper party plaintiff was the administratrix to the use of the employer, this apparently upon the theory that the cause of action was created and controlled not only by the Compensation Act, but was also subject to the terms and provisions of

the statute for "Negligence Causing Death" (Code D. C. 1924, Chapter Forty-five, Section 1301 *et seq.*).

Plaintiffs elected to stand upon the declaration as drawn, whereupon judgment was entered for the defendant, and plaintiffs noted their appeal to the Court of Appeals of the District of Columbia (R. 19).

The Court of Appeals affirmed the judgment of the lower court (R. 31), and rendered an opinion wherein it was held that the action should have been brought by the administratrix in accordance with the provisions of the death statute (Code D. C. 1924, Chapter Forty-five, Section 1302), because the Compensation Act creates no new cause of action and attempts only to assign the right of action theretofore existing under the death statute (R. 24-30).

Questions of Law Presented.

1. What are the respective rights and interests of compensation insurance carrier, employer, the person taking under the award, and the personal representative of the decedent, in actions to recover damages for death of an employee caused by a negligent third person?

2. Must the Compensation Act be construed together with, and is it subject to the limitations prescribed by, statutes creating actions for "Negligence Causing Death"?

3. For whose benefit and in what form may the action be maintained?

Reasons for Granting the Petition.

1. The case here presented is of great importance and relates to the construction to be given Sec. 33 of the Longshoremen's and Harbor Workers' Compensation Act. The questions which arise upon defendant's motion to strike the declaration involve procedural and substantive rights going to the very basis of all actions to recover damages for death of an employee caused by negligent acts of persons other than the employer.

2. The decisions of the courts below requiring the Compensation Act to be construed together with and subject to the limitations of negligent death statutes cast grave doubt upon, if they do not wholly cut off, all rights of action against negligent third persons causing death of employees. The rulings of the lower courts subject the terms and application of Sec. 33 of the Compensation Act to all the vagaries and limitations of death statutes of local character; or even to total abrogation if no death statutes exist.

3. The instant case, in holding that an employer may not assign to his carrier by conventional subrogation a right of action taken by him under Sec. 33 (*b*) of the Compensation Act, is in conflict with *The Kokusai Kisen Kabushiki Kaisha* (D. C. Texas), 44 F. (2d) 659.

4. The instant case is a departure from the rule, long settled in the Federal Courts, that an insurer under an indemnity policy takes a right of action as

legal subrogee of the assured upon payment of a claim for damages caused by a negligent third person. The case is in conflict with the principles laid down in the cases of *Travelers' Insurance Co.* v. *Great Lakes Engineering Works Co.* (C. C. A. 6th), 184 Fed. 426, 107 C. C. A. 20; *Workmen's Compensation Exchange* v. *Chicago, M. St. P. & P. R. Co.* (D. C. Idaho), 45 F. (2d) 885, involving compensation statutes. The case is a departure from the principles enunciated in the indemnity insurance cases of *Liverpool and Great Western Steam Co.* v. *Phenix Insurance Co.*, 129 U. S. 397; *Sea Ins. Co. of Liverpool et al.* v. *Vicksburg, S. & P. Ry. Co.* (C. C. A.), 159 Fed. 676; *Southern Ry. Co.* v. *Blunt & Ward* (C. C.), 165 Fed. 258.

Wherefore, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Court directed to the Court of Appeals of the District of Columbia, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 5358, Ætna Life Insurance Company, a corporation, in its own right and also to the use of Anna Roberts, in her own right and as administratrix of the estate of Henry Roberts, deceased, and Harry M. Bralove, an individual, to the use of Ætna Life Insurance Company, a corporation, appellants, *v.* Samuel D. Moses, and that said judgment of the Court of Appeals of the District of Columbia may be reversed

by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just. And your petitioners will ever pray.

ÆTNA LIFE INSURANCE COMPANY, A CORPORATION, IN ITS OWN RIGHT, AND ALSO TO THE USE OF ANNA ROBERTS, IN HER OWN RIGHT AND AS ADMINISTRATRIX OF THE ESTATE OF HENRY ROBERTS, DECEASED, AND HARRY M. BRALOVE, AN INDIVIDUAL, TO THE USE OF ÆTNA LIFE INSURANCE COMPANY, A CORPORATION,

By CHARLES W. ARTH,
LEONARD J. GANSE,
Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No.

ÆTNA LIFE INSURANCE COMPANY, A CORPORATION, IN ITS OWN RIGHT, AND ALSO TO THE USE OF ANNA ROBERTS, IN HER OWN RIGHT AND AS ADMINISTRATRIX OF THE ESTATE OF HENRY ROBERTS, DECEASED, AND HARRY M. BRALOVE, AN INDIVIDUAL, TO THE USE OF ÆTNA LIFE INSURANCE COMPANY, A CORPORATION, PETITIONERS,

v.

SAMUEL D. MOSES, AN INDIVIDUAL.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinions of the Courts Below.

The memorandum opinion filed in the cause in the Supreme Court of the District of Columbia (R. 17) is not reported.

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The opinion of the Court of Appeals of the District of Columbia was rendered March 7, 1932 (R. 24), and is reported in 57 F. (2d) 440.

II.

Jurisdiction.

The judgment of the Court of Appeals of the District of Columbia was entered March 7, 1932 (R. 31). Jurisdiction of this Court is invoked under Judicial Code, Section 240 (*a*), as amended by the Act of February 13, 1925 (c. 231, sec. 240, 36 Stat. 1157; c. 229, sec. 1, 43 Stat. 938).

III.

Statement.

A statement of the facts and the questions involved will be found in the petition for writ of certiorari.

IV.

Specification of Errors to Be Urged.

1. The Court erred in holding that Ætna Life Insurance Company does not have any right of action because the action was not assignable at common law and the assignment to the insurance carrier was invalid.

2. The Court erred in holding that the Compensation Act must be construed together with, and that it is subject to the limitations and restrictions of, the statute for "Negligence Causing Death".

3. The Court erred in holding that Ætna Life Insurance Company, insurance carrier which has paid death benefit under the award, may not sue in its own name and right, and also to the use of the person entitled to compensation and the administratrix of the estate of the decedent, to recover damages for death of an employee killed by negligent act of a third person.

4. The Court erred in holding that Harry M. Bralove, employer, may not sue in his own name to the use of Ætna Life Insurance Company, carrier, to which he has assigned his right of action against the negligent third party causing death of the employee.

5. The Court erred in holding that the action must be brought in the name of the administratrix to the use of the employer.

6. The Court erred in sustaining defendant's motion to strike the declaration.

V.

Statutes and Rules of Court Involved.

The statutes and rules of court involved are set out in the Appendix (*infra*, pp. 33-44).

VI.

Argument.

The orders of the lower courts sustaining defendant's motion to strike the declaration present substantive and procedural questions of law.

In actions to recover damages from a negligent third person causing death of an employee within the terms of the Longshoremen's and Harbor Workers' Compensation Act (as applied for purpose of Workmen's Compensation to the District of Columbia), an award of death benefit having been made thereunder, the questions arising under Compensation Act, Sec. 33, are:

1. What are the respective rights and interests of

A. The compensation insurance carrier,

B. The employer,

C. The beneficiary under the award (compensee), and

D. The personal representative of the decedent?

2. Must the Compensation Act be construed together with, and is it subject to the limitations prescribed by, statutes creating actions for "Negligence Causing Death"?

3. For whose benefit and in what form may the action be maintained?

1.

What are the respective rights and interests of carrier, employer, compensee, and personal representative, under Sec. 33 of the Compensation Act?

Henry Roberts, employee, was killed by the negligence of defendant Moses, a person other than the employer, and death benefit was awarded to Anna

Roberts, his widow, against Ætna Life Insurance Company, carrier, and Bralove, employer. Anna Roberts is also the duly appointed administratrix of the estate of the decedent. The rights, liabilities, and interests of all parties concerned are controlled by Sec. 33 of the Compensation Act (Appendix, pp. 39-40).

Sec. 33 (*a*) provides that the person entitled to compensation may elect either to receive it or to recover damages against the negligent third person (Appendix, p. 39).

Sec. 33 (*b*) provides that the acceptance of compensation constitutes such election, and operates as an assignment to the employer of all right of the person entitled to compensation to recover damages from the negligent third person (Appendix, p. 39).

Sec. 33 (*d*) provides that the employer on account of such assignment may either institute proceedings to recover damages or may compromise with such third person either before or after instituting suit (Appendix, p. 40).

Sec. 33 (*e*) governs distribution of any recovery, stating: (1) that the employee *shall retain* an amount equal to: (A) the expenses incurred by him in the proceedings or compromise including a reasonable attorney's fee; (B) the costs of all medical, surgical and other attendance, etc., provided for by Sec. 7 of the Act; (C) all amounts already paid as compensation, and an additional amount to be held as a trust fund for the payment of future instalments of compensation as they become due, such fund to be the present value of all amounts payable as compensation and to be com-

puted from a schedule prepared by the Compensation Commissioner (Appendix, p. 40).

Any excess thereover is required to be paid to the person entitled to compensation or to the representative (Appendix, p. 40). (See also Sec. 33 (*e*) (2), Appendix, p. 40).

A. Rights and Interest of Carrier.

The award of death benefit to Anna Roberts, widow, only person entitled thereto (R. 15) under Sec. 9 of the Act (Appendix, p. 34) was entered against both Bralove, employer, and Ætna Life Insurance Company, carrier (R. 8, 12, 15). By the literal wording of Sec. 33 (*b*), acceptance of the death benefit by Anna Roberts, widow assigned to the employer all her right to recover damages—*not* as personal representative of the estate of the decedent suing under Code D. C., Section 1301 *et seq.*, for "Negligence Causing Death" (Appendix, pp. 42-43), *but as the person entitled to death benefit under the Compensation Act.* Bralove, however, has sustained no actual loss nor has he paid the death benefit. His liability is only contingent, although fixed by the award. He will pay only if and when the carrier fails to pay. No action can be maintained by the employer in his own right. *City of Red Wing* v. *Eichinger et al., infra*). Unless Ætna Life Insurance Company be held to take a right which it may enforce against the negligent wrongdoer, any action against the tort-feasor must fail.

City of Red Wing v. *Eichinger et al.*, 163 Minn. 54, was a case wherein the city employed one Haga as a

street sweeper, both city and employee being subject to the Minnesota Workmen's Compensation Act. The city carried compensation insurance with the Traveler's Insurance Company. While Haga was engaged in his employment he was injured by a collision between two automobiles operated by the defendants. The Industrial Commission made an award to the employee and the insurance company paid it. The city thereafter brought suit against the defendants to recover for the injuries negligently inflicted by them on its employee. The trial court dismissed the action. The ruling was upheld upon appeal on the ground that the city was not a real party in interest; that the insurance company and not the city had suffered the loss. It was further said that the cause of action was in the insurance company which had paid the loss, and that such right of subrogation as the employer (city) had, it had assumed to pass to its insurance carrier by a subrogation clause of the policy identical in wording with the provision of the policy in the instant case.

Ætna Life Insurance Company is not a gratuitous volunteer. Sec. 4 of the Compensation Act makes the employer liable for and requires him to secure the payment of compensation to his employees (Appendix, p. 33).

Sec. 32 requires every employer to secure the payment of compensation either by insuring with a duly authorized insurance company or by furnishing satisfactory proof of his financial ability to pay (Appendix, p. 38).

Ætna Life Insurance Company, carrier, has an interest in a three-fold aspect in this case:

(1) As Statutory Assignee by Necessary Implication.

A reading of the Compensation Act demonstrates that the terms "carrier" and "employer" are used synonymously. Nothing in the statutory definitions of the words makes them mutually exclusive (Sec. 2 (4) (5)), to the contrary, the term "carrier" includes self-insurers (Appendix, p. 33).

Carrier and employer have reciprocal rights and liabilities. Sec. 17 makes the award of compensation a lien against the assets of both carrier and employer, without limit of amount, as is or may thereafter be allowed by law to the claimant for unpaid wages or otherwise (Appendix, p. 37).

Sec. 35 substitutes carrier for employer in order that the liability for compensation under the statute may be most effectively discharged by the employer. The section further provides for discharge by the carrier of the obligations and duties of the employer under such regulations as the compensation commission may provide. For such purposes (1) notice to or knowledge of the employer of the occurrence of an injury is notice to or knowledge of the carrier; (2) jurisdiction of the employer by a deputy commissioner, the commission, or any court, under the Act, is jurisdiction of the carrier; and (3) any requirement by a deputy commissioner, the commission, or any court, under any compensation order, finding or decision, is binding upon the carrier in the same manner

and to the same extent as upon the employer (Appendix, p. 40).

Sec. 36 provides that every contract of insurance issued under the Act shall contain a provision to carry out the requirements of Sec. 35; and further that insolvency or bankruptcy of the employer and/or his discharge therein shall not relieve the carrier (Appendix, p. 41).

An assumption by the carrier of all liabilities and duties imposed on the employer by the Act necessarily imports the granting of rights accruing thereby. In *Sarber* v. *Ætna Life Insurance Co.* (C. C. A. 9th), 23 F. (2d) 434, certiorari denied 277 U. S. 577, it was said:

> "This was an action for deceit. It appears from the original complaint that on July 23, 1923, the plaintiff was an employee, within the contemplation and under the provisions of the Workmen's Compensation Act of the state of California (St. 1913, p. 279, as amended); * * * that the defendant, as insurance carrier, took over and assumed the burdens, duties and obligations imposed on the employer by the Compensation Act; * * *
>
> "It should be stated at the outstart that, when the insurance carrier is substituted for the employer under the provisions of the Compensation Act, the carrier is subrogated to all the rights and duties of the employer."

It is submitted that the right of action passing to the employer by statutory assignment under Sec. 33 (*b*) likewise passed to Ætna Life Insurance Company

by necessary implication upon payment by it of the death benefit awarded.

(2) As "Legal Subrogee" Under an Indemnity Policy.

As indemnitor under the Workmen's Compensation Insurance policy issued by it to the employer, Ætna Life Insurance Company has a right of action against the negligent third person. This point has been so decided in the Federal Courts:

In *Travelers' Ins. Co.* v. *Great Lakes Engineering Works Co.* (C. C. A. 6th), 184 Fed. 426, 107 C. C. A. 20, defendant was engaged in installing an engine in a brewery. A cylinder head of the engine blew out and one employee of the brewery was killed and another injured. Actions were brought under the Ohio employers' liability statute against the brewing company by the injured employee and also by certain persons on behalf of the next of kin of the deceased employee. Damages were paid by the plaintiff insurance company which had issued an employer's liability policy containing a provision that, in case of payment of a loss thereunder the insurance company should be subrogated to the extent of such payment to all rights of recovery for such loss by the assured against third persons. The insurance company instituted an action against the defendant engineering company setting up these facts. The defendant demurred to the declaration upon the grounds of no cause of action and misjoinder of parties plaintiff, which demurrer was sustained and the action dismissed. The appellate court reversed the lower court, saying that

an action lay in the name and right of the insurance carrier, independent of any death statute. With respect to legal subrogation under the policy it was said:

> "We are thus brought to the question whether the insurer, by reason of a contract of indemnity against employer's liability, such as exists here, can maintain an action against a third party whose negligence has caused liability to the insured employer for injuries resulting in the death of its employee.
>
> "The rule is well settled in fire insurance as well as in marine insurance, that the insurer, upon paying to the assured the amount of a loss on the property insured, is subrogated in a corresponding amount to the assured's right of action against any other person responsible for the loss; this right not resting upon any relation of contract or of privity between them, but arising out of the nature of the contract of insurance as a contract of indemnity derived from the assured alone, and enforceable in his right only. * * *
>
> "We know of no reason, either upon principle or authority, why the doctrine of subrogation which has been expressly held applicable to indemnity by way of fire and marine insurance, and by at least necessary implication in the case of casualty insurance, should not be held to extend to employer's liability indemnity."

Workmen's Compensation Exchange v. *Chicago, M., St. P. & P. R. Co.*, (D. C. Idaho), 45 F. (2d) 885, is a recent case to a like effect. There one Honig, an employee of a timber company, was killed in a collision between a truck driven by him and a train operated by

the defendant. Claims for compensation were filed on behalf of the widow and minor children of the decedent against the employer timber company, and the carrier, which had issued a policy of workmen's compensation insurance to the employer. An award of $8,189.39 was entered against both employer and carrier. The carrier was paying the award to the beneficiaries. The employer and carrier thereupon instituted their action in the Federal District Court to recover damages from the negligent third person for the loss plus certain expenses. The defendant demurred and moved to strike, assigning as grounds that no right of action existed in favor of the plaintiffs, and, if so, that there was misjoinder of parties plaintiff. The court held that there were rights of action in both the employer, as statutory assignee under the Idaho Workmen's Compensation Act, and the carrier, as legal subrogee under its policy of indemnity, citing *Liverpool & Great Western Steam Co.* v. *Phenix Insurance Co.*, 129 U. S. 397, 9 S. Ct. 469, 32 L. Ed. 788; *Sea Ins. Co. of Liverpool et al.* v. *Vicksburg S. & P. Ry. Co.* (C. C. A.), 159 Fed. 676, 17 L. R. A. (N. S.) 925; *Southern Ry. Co.* v. *Blunt & Ward* (C. C.), 165 Fed. 258; 26 *C. J.* 435.

Upon the foregoing authorities, it is submitted that the Supreme Court of the District of Columbia erred in holding that: "The statute contains no other provision for the assignment of the right of action and as the right of action is not one of the class assignable at common law, the assignment to the insurance carrier is invalid" (R. 17-18).

(3) As "Conventional Subrogee" Under the Compensation Insurance Policy.

Ætna Life Insurance Company stands in still another aspect in the case at bar. It took a right of action as conventional subrogee under the terms of the policy. Paragraph K provides that the insurance company "shall be subrogated in case of any payment under this Policy, to the extent of such payment, to all rights of recovery therefor vested by law either in this employer or, in any employee or his dependents claiming hereunder, against persons, corporations, associations or estates" (R. 13). Assignments of rights of action by such provisions have been held valid, although the actions were not assignable at common law.

The *Kokusai Kisen Kabushiki Kaisha* (D. C. Texas), 44 F. (2d) 659, was an action arising under the Longshoremen's and Harbor Worker's Compensation Act, brought by the compensation insurance carrier and the employee to recover damages from the negligent third person inflicting an injury. One objection to the action was whether, if the employer refuses to sue, the action over being purely statutory and precisely defined, the carrier could take any right of action by subrogation. The carrier obtained an assignment of the cause of action from the employer. It was held that the assignment was enforceable and the carrier could maintain the action.

In *Globe Indemnity Co.* v. *Toye Bros. Auto & Taxicab Co., Inc.* (La. App. 1930), 129 So. 235, one La Barbera, an employee of one Daroca, was injured in the course of his employment by being run into from

the rear by a taxicab of the defendant. La Barbera was paid compensation by the Globe Indemnity Company, compensation insurer of the employer. The carrier then brought an action to recover damages from the negligent third person, the taxicab company. Among the defenses set up were that there was no cause or right of action, and non-joinder of parties plaintiff or defendant. The Louisiana compensation Act in force at the time of the injury made no provision for subrogation or assignment of the right of action to any one other than the employer. The policy of compensation insurance, however, contained a subrogation clause almost identical in wording with that of paragraph K in the instant case. The Court of Appeal held the conventional subrogation by the employer in favor of the insurance company valid and enforceable.

Under these authorities it is submitted that the trial court erred in holding the conventional assignment to the carrier by the employer invalid (R. 17-18).

If Ætna Life Insurance Company may not maintain the action against defendant Moses, whose negligence caused the employee's death, an anomalous situation exists. Anna Roberts, widow, has exercised her election under Sec. 33 (*a*) (*b*) and has accepted death benefit under the Compensation Act (Longshoremen's and Harbor Worker's Compensation Act). She may not maintain an action in her own name although she has an interest as statutory *cestui que* trust in any excess of recovery had against defendant Moses. *Hunt* v. *Bank Line* (C. C. A. 4th), 35 F. (2d) 136. (See also

infra, p. 24). Bralove, employer, may not maintain an action in his own right. *City of Red Wing* v. *Eichinger,* 163 Minn. 54. (See also *infra.*) If the contention of the defendant and the ruling of the lower court be true, no action arising under the Compensation Act may be maintained against the negligent tort-feasor causing the death.

B. Rights and Interest of Employer.

The award entered by the deputy commissioner provides: "That the employer, Harry M. Bralove, and the Insurance Carrier, The Ætna Life Insurance Company, shall pay compensation * * *" (R. 15). But the employer has sustained no loss nor paid the award. His liability though fixed is contingent. He will have to pay only if and when his compensation insurance carrier fails to pay. As statutory assignee under Sec. 33(*b*) he purports to take a right of action which he may not enforce because he has sustained no damage. *City of Red Wing* v. *Eichinger,* 163 Minn. 54. By express terms of the insurance policy, however, the employer has assigned the right of action to the carrier. It is proper that Harry M. Bralove sue to the use of Ætna Life Insurance Company, his assignee. *Glenn* v. *Marbury,* 145 U. S. 499, 508; *W. G. Armstrong Whitworth & Co.* v. *Norton,* 15 App. D. C. 223. The lower courts in the instant case have said, however, that the action must be in the name of the administratrix to the use of the employer, this, although the employer does not take as assignee of the personal representative in any aspect. He is statutory assignee of

the "person entitled to compensation," which right of action he has assigned to his carrier.

C. Rights and Interest of Compensee.

Anna Roberts stands in a two-fold relation to the case at bar. She is in one aspect the "person entitled to compensation" under the Act. In the other she is the administratrix of the estate of the decedent (*infra*, p. 25). As the person entitled to compensation, she is beneficiary under an award of death benefit which may equal $7,500.00 (cf. Sec. 14 (m), Appendix, p. 37). If recovery be had in the instant case in an amount in excess of such sums as are to be retained as attorney's fees and expenses, the cost of medical, surgical and other benefits furnished under Sec. 7, and all amounts already paid as compensation (cf. Sec. 33 (e) (1) (A) (B) and (C), Anna Roberts, compensee, has a *real interest* in the recovery. The present value of all future payments of compensation would be computed, and the excess, to the extent of the computed amount, would be retained "as a trust fund to pay such compensation as it becomes due" (Sec. 33 (e) (1) (C)). To the extent of the difference between any sums retained for expenditures, and the computed value of future payments, Anna Roberts has an active interest as statutory *cestui que trust*. *Stackpole* v. *Pacific Gas & Electric Co.*, 181 Cal. 700; *Bassot et al.* v. *United Railroads of San Francisco*, 39 Cal. App. 60, 177 Pac. 884.

D. Rights and Interest of the Personal Representative of Decedent.

Anna Roberts is the duly appointed administratrix of the estate of Henry Roberts, deceased. In event of a recovery of damages from defendants in excess of the amounts properly deductible by the carrier for expenditures and the computed value of the trust fund for payment of future compensation, "any sum, in excess of such compensation" would be paid to her as personal representative for distribution as part of the estate of the decedent (Sec. 33 (e) (1) (C) and Sec. 33 (e) (2)). Anna Roberts, administratrix, has a real interest in the action. *Stackpole* v. *Pacific Gas & Electric Co., supra; Bassot et al.* v. *United Railroads of San Francisco, supra.*

2.

Must the Compensation Act be construed together with, and is it subject to the limitations prescribed by, statutes creating actions for "Negligence Causing Death?"

The courts below have held that the Compensation Act must be construed together with, and the form of action be governed by, Code D. C., Section 1302 (R. 18, 24-30). Petitioners assert that the Compensation Act, Sec. 33, creates a new cause of action, makes complete provision for all of its purposes, and is not controlled or limited by the negligent death statute in any respect. The Court of Appeals of the District of Columbia has so held in an analogous case—*Hyde* v. *Southern Ry. Co.*, 31 App. D. C. 466.

In that case, which arose under the Employers' Liability Act, one Christiana Hyde, as administratrix of the estate of one Richard Hyde, deceased, brought an action against the railroad company to recover damages laid at $20,000.00 in each count of the declaration, for the death of her intestate from an act of negligence of the defendant. The trial courts sustained a demurrer to the first four counts of the declaration upon the ground that the recovery under the Liability Act was subject to the control of Code D. C., Section 1301, which limits the recovery of damages for injuries resulting in death from wrongful act of any person to $10,000.00. A special appeal was taken to the Court of Appeals of the District of Columbia. That court reversed the ruling of the lower court, holding that the Employers' Liability Act created a new cause of action for the benefit of employees of a common carrier in the District of Columbia, and, in case of their death, for the benefit of widows, children and other next of kin. The appellate court said further that the operation and objects of the two statutes were different; that the Liability Act operated in the several Territories; and that so far as the court could determine, the intention of the Congress was to give the act operation according to its terms, independent of any control of the negligent death statute.

A. The Compensation Act and the Death Statute Are Inconsistent.

The terms of the two statutes make it difficult, if not impossible, to construe them together.

(1) *Limitations of Time are Different:* Compensation Act, Sec. 13 (*a*), provides that a claim for death benefit may be filed within one year after the death, except if payment of death benefit has been made without an award, in which event the claim may be filed within one year after the date of last payment (Appendix, p. 36). By Sec. 13 (*b*), failure to file the claim within such period is not a bar to the right unless objection thereto is made at the first hearing (Appendix, p. 36). Sec. 13 (*c*) and (*d*) provide for other contingencies enlarging the time for filing claims (Appendix, p. 36). But Code D. C., Section 1302, requires that all actions for negligence causing death "shall be brought * * * within one year after the death of the party injured" (Appendix, p. 43). It is not only possible, but probable, that claims for death benefit under the Compensation Act may be filed at such time, or the procedure in the Compensation Commission or courts be so delayed, that an award of death benefit, thereby "assigning to the employer all right of the person entitled to compensation," can not be entered within one year after death of the party injured. See *Great Lakes Dredge & Dock Co. et al.* v. *Brown, etc.* (D. C. Ill.) 47 F. (2d) 265. If the Compensation Act and death statute must be construed together, as held by the courts below, the absurd result would be that the employer and carrier take a right of action by assignment under the Compensation Act upon entry of an award, which right had ceased to exist prior thereto because the action to recover damages was not instituted within the time limited by the death statute.

(2) *Causes of Action are Different:* Code D. C., Section 1301 (Appendix, p. 42), creates a right of action on behalf of the widow and next of kin of the decedent. *Southern Railway Co.* v. *Hawkins,* 35 App. D. C., 313. Sec. 33 (*a*) of the Compensation Act creates a right of action in the "person entitled to compensation" as determined by Sec. 9. If the two statutes must be construed together, a question which would necessarily arise would be: "What right has a widow *as such* to assign under Code D. C., Section 1301?" The answer would be, "None!" The situation then is that Sec. 33 (*a*) (*b*) of the Compensation Act provides for assignment of an action which does not exist. The only logical conclusion which can be drawn in view of inconsistency of the statutes is that each is self-sufficient.

(3) *Beneficiaries are Different:* Code D. C., Section 1301, creates a cause of action, and damages are assessed, for the benefit of the widow and next of kin of the decedent. Compensation Act, Sec. 9, creates death benefit in behalf of persons who may be different from those designated in the death statute (Appendix, p. 34).

Compensation Act, Sec. 44, requires employer and carrier to pay $1,000.00 into a rehabilitation fund for designated purposes in cases where it is determined that there is no person entitled to compensation within the meaning of the Act (Appendix, p. 42). By Sec. 33 (*c*) payment into the fund operates "as an assignment to the employer of all right of the legal representative of the deceased * * * to recover damages against such third person, whether or not the representative has notified the deputy commissioner of his

election" (Appendix, p. 39). But it has been held by the Court of Appeals in *Neubeck* v. *Lynch*, 37 App. D.C. 576, 571, that in actions to recover for negligence causing death it must be alleged and proved that there are dependent next of kin. If death statute and Compensation Act must be construed together, the right of action accruing to employer and carrier under Sec. 33 (*c*) of the Act would be unenforceable because it would be impossible to allege or prove the existence of any beneficiary within the meaning of the Compensation Act.

4. *Damages are Different:* Code D. C., Section 1301, limits the amount of recovery to $10,000.00. There is no suggestion of limitation of amount in the Compensation Act. A limitation of $10,000.00 on the amount that may be recovered under the death statute would defeat the express provisions of Sec. 33 (*e*), where, as provided by that section, employer and carrier may retain their expenditures and the computed value of future instalments, and the excess thereover is to be paid to the personal representative.

5. *Distribution of Damages is Different:* Code D. C., Section 1303, provides that damages recovered shall inure to the benefit of the family of the decedent and be distributed according to the provisions of the statute of distribution in force in the District of Columbia (Appendix, p. 43). Under that statute, a widow, there being no children, could not take more than one-half of the amount recovered under the death statute. In no event could she receive more than $5,000.00, one-half of the maximum amount of $10,000.00 limited by Section 1301. But Compensation Act, Secs. 9 and 14

(*m*), provide for death benefit to the widow in an amount which may equal $7,500.00.

There may also be next of kin entitled to share in a distribution under Sec. 1303 of the death statute who would have no rights under the Compensation Act (Compare Compensation Act, Sec. 9 (*b*) (*c*) (*d*) (*g*), Appendix, p. 34).

In view of the inconsistencies the petitioners submit that the cause of action in the instant case arises under the Compensation Act, unencumbered by any of the provisions of the death statute.

3.

For Whose Benefit and In What Form May the Action be Maintained?

The Rules of the Supreme Court of the District of Columbia govern the form of action in the case at bar and designate who must or may be made parties herein (see Rules, Appendix, p. 44). These rules have the force of law. *Judd & Detweiler* v. *Gittings*, 43 App. D. C. 304, 311; *Murphy* v. *Gould*, 39 App. D. C. 363, 367. Equity Rule 13—expressly made applicable to actions at law—provides that:

> "Every action shall be prosecuted in the name of the real party in interest, but * * * (*a*) trustee of an express trust, or a party expressly authorized by statute, may sue in his own name without joining with him the party for whose benefit the action is brought. All persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs * * *" (Appendix, p. 44).

Ætna Life Insurance Company, carrier paying the death benefit, is a real party in interest and may maintain an action in its own right to recover its loss from the wrongdoer. The *Kokusai Kisen Kabushiki Kaisha* (D. C. Texas), 44 F. (2d) 659; *Travelers' Ins. Co.* v. *Great Lakes Engineering Works Co., supra,* p. 18, *Workmen's Compensation Exchange* v. *Chicago, M., St. P. & P. R. Co.* (D. C. Idaho), 45 F. (2d) 885; *City of Red Wing* v. *Eichinger,* 163 Minn. 54.

Anna Roberts, widow, as the person awarded death benefit, has a real interest in the proceeding. She is the statutory *cestui que trust* for whom a portion of any excess of recovery will be held in trust for the payment of future installments. (*Compensation Act,* Sec. 33 (*e*) (1) (C). She is a proper use plaintiff. *Stackpole* v. *Pacific Gas and Electric Co.,* 181 Cal. 700; *Bassot et al.* v. *United Railroads of San Francisco,* 39 Cal. App. 60, 177 Pac. 884.

Anna Roberts, administratrix of the estate of Henry Roberts, deceased, has a real interest in the action. As personal representative she will take any excess of damages recovered, after deduction of the amounts having preferential claim (*Compensation Act,* Sec. 33 (*e*) (1) (C) and Sec. 33 (*e*) (2). In this capacity she is also a proper use plaintiff.

Harry M. Bralove, employer, has a direct but contingent liability for death benefit awarded. His right to proceed against the wrongdoer, such as it may be, has been assigned to the insurance carrier assuming his liability and paying the award. He may and should

sue as assignor to the use of the Insurance Company, his assignee.

It has been held, upon objections identical with those raised by the defendant herein, that the technical niceties of common law pleading and the provisions of death statutes as to the form of titling do not apply to cases arising under compensation acts. *Clough & Molloy* v. *Shilling*, 149 Md. 189. For variation in the manner of pleading parties plaintiff in death actions similar to that here presented, see *Maryland Casualty Co. et al.* v. *Union Bridge Electric Mfg. Co.*, 145 Md. 644; *State Accident Fund* v. *N. Y., P. & N. R. Co.*, 141 Md. 305; *Bethlehem Steel Co.* v. *Raymond Concrete Pile Co.*, 141 Md. 67; *Kaufman* v. *United Railways & Electric Co.*, 135 Md. 524.

CONCLUSION.

Under a practical application of the Compensation Act and the rules of court, and in the light of the cases cited, it is submitted that the declaration presents no misjoinder of causes of action, and joins as parties plaintiff only those whose interests could be affected by the verdict and judgment; a writ of certiorari should be granted, and this Court should review the decision of the Court of Appeals of the District of Columbia, and finally reverse it.

Respectfully,

CHARLES W. ARTH,
LEONARD J. GANSE,
Counsel for Petitioners.

APPENDIX.

Longshoremen's and Harbor Workers' Compensation Act, (Act of March 4, 1927, C. 509, 44 Stat. 1924).

* * * * * * *

DEFINITIONS.

SEC. 2. When used in this Act—

* * * * * * *

(4) The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any dry dock).

Act of May 17, 1928, C. 612, 45 Stat. 600:

* * * in applying such provisions the term "employer" shall be held to mean every person carrying on any employment in the District of Columbia, and the term "employee" shall be held to mean every employee of any such person.

(5) The term "carrier" means any person or fund authorized under section 32 to insure under this Act and includes self-insurers.

* * * * * * *

LIABILITY FOR COMPENSATION.

SEC. 4 (*a*) Every employer shall be liable for and shall secure the payment to his employees of the compensation payable under sections 7, 8, and 9. * * *

(*b*) Compensation shall be payable irrespective of fault as a cause for the injury.

* * * * * * *

MEDICAL SERVICES AND SUPPLIES.

SEC. 7. (*a*) The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for such period as the nature of the injury or the process of recovery may require. * * *

COMPENSATION FOR DEATH.

SEC. 9. If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

* * * * * * *

(*b*) If there be a surviving wife or dependent husband and no child of the deceased under the age of eighteen years, to such wife or dependent husband 35 per centum of the average wages of the deceased, during widowhood, or dependent widowhood with two years' compensation in one sum upon remarriage; and if there be a surviving child or children of the deceased under the age of eighteen years, the additional amount of 10 per centum of such wages for each such child until the age of eighteen years; in case of the death or remarriage of such surviving wife or dependent husband any surviving child of the deceased employee, at the time under eighteen years of age, shall have his compensation increased to 15 per centum of such wage, and the same shall be payable until he shall reach the age of eighteen years: *Provided*, That the total amount payable shall in no case exceed 66⅔ per centum of such wages. The deputy commissioner having jurisdiction over the claim may, in his discretion, require the appointment of a guardian for the pur-

pose of receiving the compensation of a minor child. In the absence of such a requirement the appointment of a guardian for such purposes shall not be necessary.

(*c*) If there be a surviving child or children of the deceased under the age of eighteen years, but no surviving wife or dependent husband, then for the support of each such child under the age of eighteen years, 15 per centum of the wages of the deceased: *Provided*, That the aggregate shall in no case exceed 66⅔ per centum of such wages.

(*d*) If there be no surviving wife or dependent husband or child under the age of eighteen years or if the amount payable to a surviving wife or dependent husband and to children under the age of eighteen years shall be less in the aggregate than 66⅔ per centum of the average wages of the deceased; then for the support of grandchildren or brothers and sisters under the age of eighteen years, if dependent upon the deceased at the time of the injury, 15 per centum of such wages for the support of each such person until the age of eighteen years and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the injury, 25 per centum of such wages during such dependency. But in no case shall the aggregate amount payable under this subdivision exceed the difference between 66⅔ per centum of such wages, and the amount payable as hereinbefore provided to the surviving wife or dependent husband and for the support of surviving child or children.

* * * * * * *

(*g*) Aliens: Compensation under this chapter to aliens not residents (or about to become non-residents) of the United States or Canada shall be the same in amount as provided for residents, except that depend-

ents in any foreign country shall be limited to surviving wife and child or children, or if there be no surviving wife or child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for the period of one year prior to the date of the injury, and except that the commission may, at its option or upon the application of the insurance carrier shall, commute all future installments of compensation to be paid to such aliens by paying or causing to be paid to them one-half of the commuted amount of such future instalments of compensation as determined by the commission.

* * * * * * *

TIME FOR FILING OF CLAIMS

SEC. 13 (*a*) The right to compensation for disability under this Act shall be barred unless a claim therefor is filed within one year after the injury, and the right to compensation for death shall be barred unless a claim therefor is filed within one year after the death, except that if payment of compensation has been made without an award on account of such injury or death a claim may be filed within one year after the date of the last payment. Such claim shall be filed with the deputy commissioner in the compensation district in which such injury or such death occurred.

(*b*) Notwithstanding the provisions of subdivision (*a*) failure to file a claim within the period prescribed in such subdivision shall not be a bar to such right unless objection to such failure is made at the first hearing of such claim in which all parties in interest are given reasonable notice and opportunity to be heard.

(*c*) If a person who is entitled to compensation under this Act is mentally incompetent or a minor, the

provisions of subdivision (*a*) shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of such guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age.

(*d*) Where recovery is denied to any person, in a suit brought at law or in admiralty to recover damages in respect of injury or death, on the ground that such person was an employee and that the defendant was an employer within the meaning of this Act and that such employer had secured compensation to such employee under this Act, the limitation of time prescribed in subdivision (*a*) shall begin to run only from the date of termination of such suit.

* * * * * * *

PAYMENT OF COMPENSATION.

Sec. 14 * * *

(*m*) The total compensation payable under this Act for injury or death shall in no event exceed the sum of $7,500.

* * * * * * *

COMPENSATION A LIEN AGAINST ASSETS.

Sec. 17. Compensation shall have the same preference of lien against the assets of the carrier or employer without limit of amount as is now or may hereafter be allowed by law to the claimant for unpaid wages or otherwise.

* * * * * * *

SECURITY FOR COMPENSATION.

Sec. 32. (*a*) Every employer shall secure the payment of compensation under this Act—

(1) By insuring and keeping insured the payment of such compensation with any stock company or mutual company or association, or with any other person or fund, while such person or fund is authorized (A) under the laws of the United States or of any State, to insure workmen's compensation, and (B) by the commission, to insure payment of compensation under this Act; or

(2) By furnishing satisfactory proof to the commission of his financial ability to pay such compensation and receiving an authorization from the commission to pay such compensation directly. The commission may, as a condition to such authorization, require such employer to deposit in a depository designated by the commission either an indemnity bond or securities (at the option of the employer) of a kind and in an amount determined by the commission, and subject to such conditions as the commission may prescribe, which shall include authorization to the commission in case of default to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds, to procure prompt payment of compensation under this Act. Any employer securing compensation in accordance with the provisions of this paragraph shall be known as a self-insurer.

(*b*) In granting authorization to any carrier to insure payment of compensation under this Act the commission may take into consideration the recommendation of any State authority having supervision over carriers or over workmen's compensation, and may authorize any carrier to insure the payment of com-

pensation under this Act in a limited territory. Any marine protection and indemnity mutual insurance corporation or association, authorized to write insurance against liability for loss or damage from personal injury and death, and for other losses and damages, incidental to or in respect of the ownership, operation, or chartering of vessels on a mutual assessment plan, shall be deemed a qualified carrier to insure compensation under this Act. The commission may suspend or revoke any such authorization for good cause shown after a hearing at which the carrier shall be entitled to be heard in person or by counsel and to present evidence. No suspension or revocation shall affect the liability of any carrier already incurred.

COMPENSATION FOR INJURIES WHERE THIRD PERSONS ARE LIABLE.

SEC. 33. (*a*) If on account of a disability or death for which compensation is payable under this Act the person entitled to such compensation determines that some person other than the employer is liable in damages, he may elect, by giving notice to the deputy commissioner in such manner as the commission may provide, to receive such compensation or to recover damages against such third person.

(*b*) Acceptance of such compensation shall operate as an assignment to the employer of all right of the person entitled to compensation to recover damages against such third person, whether or not the person entitled to compensation has notified the deputy commissioner of his election.

(*c*) The payment of such compensation into the fund established in Section 44 shall operate as an assignment to the employer of all right of the legal rep-

resentative of the deceased (hereinafter referred to as "representative") to recover damages against such third person, whether or not the representative has notified the deputy commissioner of his election.

(*d*) Such employer on account of such assignment may either institute proceedings for the recovery of such damages or may compromise with such third person either without or after instituting such proceeding.

(*e*) Any amount recovered by such employer on account of such assignment, whether or not as the result of a compromise, shall be distributed as follows:

(1) The employer shall retain an amount equal to—

(A) The expenses incurred by him in respect of such proceedings or compromise (including a reasonable attorney's fee as determined by the deputy commissioner).

(B) The cost of all benefits actually furnished by him to the employee under Section 7.

(C) All amounts paid as compensation, and the present value of all amounts payable as compensation, such present value to be computed in accordance with a schedule prepared by the commission, and the amounts so computed to be retained by the employer as a trust fund to pay such compensation as it becomes due and to pay any sum in excess of such compensation, to the person entitled to compensation or to the representative; and

(2) The employer shall pay any excess to the person entitled to compensation or to the representative.

SUBSTITUTION OF CARRIER FOR EMPLOYER.

SEC. 35. In any case where the employer is not a self-insurer, in order that the liability for compensa-

tion imposed by this Act may be most effectively discharged by the employer, and in order that the administration of this Act in respect of such liability may be facilitated, the commission shall by regulation provide for the discharge, by the carrier for such employer, of such obligations and duties of the employer in respect of such liability, imposed by this Act upon the employer, as it considers proper in order to effectuate the provisions of this Act. For such purposes (1) notice to or knowledge of an employer of the occurrence of the injury shall be notice to or knowledge of the carrier, (2) jurisdiction of the employer by a deputy commissioner, the commission, or any court under this Act shall be jurisdiction of the carrier, and (3) any requirement by a deputy commissioner, the commission, or any court under any compensation order, finding, or decision shall be binding upon the carrier in the same manner and to the same extent as upon the employer.

INSURANCE POLICIES.

SEC. 36. (*a*) Every policy or contract of insurance issued under authority of this Act shall contain (1) a provision to carry out the provisions of section 35, and (2) a provision that insolvency or bankruptcy of the employer and/or discharge therein shall not relieve the carrier from payment of compensation for disability or death sustained by an employee during the life of such policy or contract.

(*b*) No contract or policy of insurance issued by a carrier under this Act shall be canceled prior to the date specified in such contract or policy for its expiration until at least thirty days have elapsed after a notice of cancellation has been sent to the deputy commissioner and to the employer in accordance with the provisions of subdivision (*c*) of section 12.

* * * * * * *

SPECIAL FUND.

SEC. 44. (*a*) There is hereby established in the Treasury of the United States a special fund for the purpose of making payments in accordance with the provisions of subsections (*f*) and (*g*) of section 8 of this Act. Such fund shall be administered by the commission. The Treasurer of the United States shall be the custodian of such fund, and all moneys and securities in such fund shall be held in trust by such Treasurer and shall not be money or property of the United States.

(*b*) The Treasurer is authorized to disburse moneys from such fund only upon order of the commission.

* * * * * * *

(*c*) Payments into such fund shall be made as follows:

(1) Each employer shall pay $1,000 as compensation for the death of an employee of such employer resulting from injury where the deputy commissioner determines that there is no person entitled under this Act to compensation for such death. Fifty per centum of each such payment shall be available for the payments under subdivision (*f*) of section 8, and 50 per centum shall be available for payments under subdivision (*g*) of section 8.

(2) All amounts collected as fines and penalties under the provisions of this Act shall be paid into such fund.

Code D. C. 1924, Chapter Forty-five.

NEGLIGENCE CAUSING DEATH.

SEC. 1301. LIABILITY.—Whenever by an injury done or happening within the limits of the District of Columbia the death of a person shall be caused by

the wrongful act, neglect, or default of any person or corporation, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured, or if the person injured be a married woman, have entitled her husband, either separately or by joining with the wife, to maintain an action and recover damages, the person who or corporation which would have been liable if death had not ensued shall be liable to an action for damages for such death, notwithstanding the death of the person injured, even though the death shall have been caused under circumstances which constitute a felony; and such damages shall be assessed with reference to the injury resulting from such act, neglect, or default causing such death, to the widow and next of kin of such deceased person; *Provided,* That in no case shall the recovery under this act exceed the sum of ten thousand dollars: *And provided further,* That no action shall be maintained under this chapter in any case when the party injured by such wrongful act, neglect, or default has recovered damages therefor during the life of such party.

Sec. 1302. By Whom Suit to be Brought.—Every such action shall be brought by and in the name of the personal representative of such deceased person, and within one year after the death of the party injured.

Sec. 1303. Distribution of Damages.—The damages recovered in such action shall not be appropriated to the payment of the debts or liabilities of such deceased person, but shall inure to the benefit of his or her family and be distributed according to the provisions of the statute of distribution in force in the said District of Columbia.

Rules of Court.

Supreme Court of the District of Columbia, 1929:

LAW RULES.

The law rules shall apply in equity, and the equity rules shall apply at law, unless inconsistent with the rules prescribed.

EQUITY RULES.

The equity rules shall apply at law and the law rules shall apply in equity unless inconsistent with the rules prescribed.

13.

PARTIES GENERALLY—INTERVENTION.

Every action shall be prosecuted in the name of the real party in interest, but (*a*) * * * trustee of an express trust, * * * or a party expressly authorized by statute, may sue in his own name without joining with him the party for whose benefit the action is brought. All persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs, and any person may be made a defendant who has or claims an interest adverse to the plaintiff. Any person may at any time be made a party if his presence is necessary or proper to a complete determination of the case. Persons having a united interest may be joined on the same side as plaintiffs or defendants, but when any one refuses to join, he may for such reason be made a defendant.

Any one claiming an interest in the litigation may at any time be permitted to assert his right by intervention, but the intervention shall be in subordination to, and in recognition of the propriety of the main proceeding.